

(2014) 04 DEL CK 0204
In the Delhi High Court
Case No : W.P. (C) 2448/1996

Daulat Ram College

APPELLANT

Vs

Regional Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 21-04-2014

Acts Referred:

Delhi University Act, 1922 — Section 2(a), 2(d), 28, 28(d), 30
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(2)(b),
14, 14A, 16, 16(1) (c)
Provident Funds Act, 1925 — Section 8(2)

Citation : (2014) 209 DLT 719 : (2014) 2 ESC 1075

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : M.M. Kalra, Mr. Kunal Kalra and Ms. Sushma Sachdeva, Advocate for the Appellant; Rajesh Manchanda, Mr. Amitesh Kumar, Mr. M.M. Singh, Advocates, Mr. Rajat Manchanda, Advocate for R1, Mr. Sunil Singh, Advocate for R2 and Ms. Mamta Tiwari, Advocate for UGC, Advocate for the Respondent

Final Decision : Allowed

Judgement

V. Kameswar Rao, J.—The challenge in this writ petition is to the order passed by the Regional Provident Fund Commissioner ("Commissioner", in short) u/s 7A of the Employees Provident Fund and Miscellaneous Act, 1952 ("Act", in short) which was communicated to the petitioner-College vide covering letter dated May 27, 1995, whereby the Commissioner was of the view that the petitioner-College having not been set up under any enactment, does not satisfy the criteria for exclusion laid down u/s 16(1)(c) of the Act, and therefore, the Act is applicable to the petitioner-College. The short question which arises in this writ petition is whether the petitioner-College being an affiliated College of Delhi University would be excluded in terms of Section 16(1)(c) of the Act.

2. Some of the relevant facts are that the Delhi University was established under Delhi University Act, 1922, a Central Act ("DU Act", in short). The petitioner, an affiliated College of the Delhi University was started under the name of "Pramila

College" in the year 1960. The name of the petitioner-College was changed from "Pramila College" to Daulat Ram College. It is the case of the petitioner that the University of Delhi is a body incorporated under the DU Act. The DU Act defines a "College" which includes an affiliated and a constituent College. The teachers imparting instructions in a college and recognized by the University are also the teachers of University of Delhi.

3. The petitioner states that it is affiliated to the Delhi University and is imparting education to the girls upto Post-Graduation. It is one of the constituent colleges of the University. The petitioner-College is bound to follow the provisions of the DU Act and the Statutes and the Ordinances framed thereunder. Section 46 of the DU Act reads as under:

46. Pension and provident funds-

(1) The University shall constitute, for the benefit of its officers, teachers, clerical staff and servants, in such manner and subject to such conditions as may be prescribed by the Statutes, such pension, insurance and provident funds as it may deem fit.

(2) Where any such pension, insurance or provident fund has been so constituted, [or where any such pension, insurance or provident fund has been constituted by a college under rules which have been approved by the Central Government], the Central Government may declare that the provisions of the Provident Funds Act.

4. Section 28 of the DU Act enumerates matters which can be provided for by the Statutes. Two such matters being:

(i) The constitution of a pension or Provident Fund and Establishment of an Insurance Scheme for the benefit of the Officers, Teachers and other employees of the University"

(ii) The conditions under which Colleges and other institutions may be admitted to the privileges of the University and the withdrawal of such privileges.

5. Statute 30 of the Statutes of the University prescribes conditions on the basis of which a college may be admitted to the privileges of the University. One of the conditions being the following:

The rules relating to the composition and personnel to the Governing body, and those relating to other matters affecting the management of the College shall conform to the Statutes and the Ordinances of the University and Conditions of Government Grant to Colleges. Such rules and personnel will require the approval of the Executive Council.

6. Yet another condition being the following:

The service conditions of the administrative and other non-academic staff of every such College shall be in accordance with those laid down by the University

for similar posts in the University.

7. It is the stand of the petitioner, like any other College, whether affiliated or constituent of the University is in receipt of maintenance grant to the extent of 95% grant from the University Grants Commission. The petitioner is bound to comply with the "Conditions of Government Grant to Colleges", which included that "every governing body shall maintain a Provident Fund for the benefit of members of its teaching staff, in accordance with rules prescribed by the Government of India".

8. Clause 10 of Ordinance XVIII of the Ordinances of the University reads as follows:

10(1) Every Governing Body shall maintain a Provident Fund for the benefit of members of its teaching staff in accordance with rules prescribed by the Government of India.

(2) The accounts of the Fund shall be duly audited each year and a copy of the accounts so audited shall be furnished to each subscriber to the Fund.

9. It is further the case of the petitioner-College that under the Rules and Regulations of the petitioner-College Society, the governing body shall establish and maintain a Provident Fund for the members of the College Staff in accordance with Ordinance XVIII(10) and such other rules as may be approved by the Government of India. It is also stated by the University that since the beginning of the establishment of the University, there have been in force Statutes providing for a Provident Fund for the benefit of officers, teachers, clerical staff and other servants of the University. For the last more than 25 years, the said matter is governed by the Statute 28 and Statute 28-A of the Statutes of the University. The Statutes provides, inter alia, for Provident Fund, Gratuity, Pension and Family Pension etc. These Statutes have the approval of the Central Government and the schemes outlined therein are substantially the same as have been prescribed by the Central Government for its employees. Clause 5 of the Statute 28-A, inter alia, provides:

5. As and when the Central Government amends its Rules giving more benefits to its employees relating to General Provident Fund, Contributory Provident Fund, Pension, Gratuity etc, which are advantageous to the employees of the University, the employees of the University will be entitled to the same benefits with effect from the date such amendment is brought into force by the Central Government with respect to its employees.

10. It is noted that the Delhi University framed rules known as Delhi University Colleges Retirement Benefit Rules, 1970 ("Rules of 1970", in short), and which were made applicable to the Colleges of the University, whether affiliate, constituent or maintained. It is stated in the Rules of 1970 that they are applicable to all Colleges and the maintained institutions of the University in receipt of maintenance grant from the University Grants Commission. The

schemes of the Rules of 1970 are exactly the same as given in Statute 28-A of the Statutes of the University, with the only difference being that the words "Registrar", "Executive Council", "University" and Statute 28-A occurred in Statute 28-A, the same have been replaced by the words "Principal, Governing Body, College and Rules of 1970 respectively. According to the petitioner-College, a communication dated March 11, 1971 was sent by the then Secretary of UGC to the Vice-Chancellor of the University, stating therein that the Rules of 1970 and schemes contained therein were approved by the Ministry of Education and Youth Services and those rules were brought into force w.e.f. April 01, 1970 in respect of all the Colleges affiliated to the University and who are in receipt of maintenance grant from the UGC.

11. The petitioner-College's case is also that when any change was brought in Statute 28-A, a corresponding amendment was carried out in the Rules of 1970. It is the case of the petitioner-College that by a notification issued by the Central Government, the provisions of the Provident Funds Act, 1925 were extended to a college affiliated to University established by the Statute. According to the petitioner-College, the provisions contained in Section 8(2) of the Provident Funds Act, 1925 read with entry 7 of its Schedule and Section 46 of the DU Act, the provident fund constituted under the scheme outlined in the Rules of 1970 is to be treated as Government Provident Fund. By virtue of the provisions contained in Section 1(2)(b) of the Act, the Central Government by notification dated February 19, 1982 applied the Act w.e.f. March 06, 1982 to any University and to any College whether or not affiliated to a University. This resulted to the Ministry of Education, vide Memorandum dated January 13, 1983, questioning the extension of the Act to the Central Universities including the University of Delhi and its Colleges. It is the case of the petitioner-College that the Registrar of the University, by a communication dated January 24, 1983 addressed to the Regional Provident Fund Commissioner, also recorded the objections of the University to the extension of the Act to the University and its Colleges and asked that no action be taken pursuant to the notification issued by the Ministry of Labour. Vide communication dated February 02, 1983 addressed to the Registrar of University, the Government decided to exclude the Universities and other institutions where the relevant Act of the Parliament/State Legislature provided specifically for Provident Fund for their employees and where the Provident Fund Scheme is in operation. The Registrar was requested to supply to the office of the respondent No. 1 a list of such like institutions for further action. The University took action on that letter and supplied to the respondent No. 1 a list of its colleges which were governed by the provisions of the University Act and in respect of which the Provident Fund Scheme as formulated by the University was also in operation. The name of the petitioner-College was also included in that list. Eventually, the respondent No. 1, by his communication dated February 29, 1984 addressed to the Principal of the petitioner-College wrote to say that the College had been excluded from the purview of the Act. It may be necessary to state here Section 16 of the Act, which reads as follows:

16. Act not to apply to certain establishments:

(1) This Act shall not apply:--

(a) to any establishment registered under the Cooperative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State relating to co-operative societies, employing less than fifty persons and working without the aid of power; or

(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or

(c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits; or

(d) to any other establishment newly set up, until the expiry of a period of three years from the date on which such establishment is, or has been, set up.

Explanation--For the removal of doubts, it is hereby declared that an establishment shall not be deemed to be newly set up merely by reason of a change in its location.

(2) If the Central Government is of opinion that having regard to the financial position of any class of [establishments] or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt whether prospectively or retrospectively that class of establishments from the operation of this Act for such period as may be specified in the notification.

12. It is the case of the petitioner-College that notwithstanding the fact that the Provident Fund of the petitioner-College is to be treated as the Government Provident Fund under the Provident Funds Act and the petitioner-College was expressly excluded from the operation of the Act as far back as in 1984, the office of the respondent No. 1 some time in the year 1993, started corresponding with the petitioner with a view to cover it under the Act. The stand of the College was not agreed to by the respondent No. 1 which led to the issuance of notice dated March 30, 1995 wherein it was alleged that the petitioner-College has violated the provisions of the Act and the scheme made thereunder. The violation alleged was that the petitioner-College had not deposited its contributions to various funds under the Act from August 1982 and thus had committed offence under Sections 14 and 14A of the Act. In response to various summons issued, the petitioner-College filed an application before the respondent No. 1 for deciding the preliminary question whether the petitioner-College was at all covered under the Act. It was, inter alia, contended in the said application that

the respondent No. 1 had no jurisdiction to issue summons u/s 7A of the Act as the Act was not at all applicable to the petitioner-College. It was further stated by petitioner-College that the petitioner-College, being a constituent College of the University was complying with the rules framed by the University and the rules being identical with the rules of the Central Government, the petitioner was squarely covered by the Provident Funds Act. Further, the respondent No. 1 himself by his order dated February 29, 1984 had excluded the petitioner-College from the purview of the Act.

13. It was the stand of the respondent No. 1 that the petitioner is covered under the Act and it did not come within the four corners of the provisions of Section 16 of the Act. It was further contended that the petitioner was exempted from the operation of the Act by a notification dated January 28, 1984 for a period of three years, and then, again by another notification for a further period of three year. The reliance was also placed on notification dated March 19, 1993 whereby it was alleged that the petitioner did not fulfil the conditions of providing a copy of the audited annual Provident Fund accounts together with the audited balance sheet of the establishment for each accounting year. Because of the violation, it was the stand that the exemption granted is liable to be cancelled. Ultimately, the proceedings u/s 7A were decided by the Commissioner whereby he had concluded that the petitioner-College does not fall within the exemption granted u/s 16(1)(c) of the Act and was of the view that the petitioner-College is covered under the provisions of the Act.

14. The respondent no. 1, who has filed a counter affidavit, has more or less taken the same stand as has been concluded by the Commissioner in the impugned order. It is contended by Mr. M.M. Kalra, learned counsel appearing for the petitioner that the affiliated College being a College established under the provisions of the DU Act, the provisions of Section 16(1)(c) are squarely applicable to the College. He would further state that the Provident Fund insofar as the affiliated Colleges are concerned, are being regulated by the Rules of 1970 framed by the Delhi University under the provisions of the DU Act. The benefit is in vogue for last so many years, could not have been disturbed by the respondent No. 1 on an interpretation that the College being an affiliated College coming under the administrative control of the Delhi University, cannot be construed as set up by any enactment, therefore, do not satisfy the criteria of exclusion laid down u/s 16(1)(c) of the Act. Mr. Kalra would also state that DU Act recognizes the grant of Pension and Provident Fund to its employees. According to Mr. Kalra, Statute 28-A also governs with the provisions of Pension and Provident fund. He would state, para materia, provisions have been made in the Rules of 1970, which clearly stipulates that the same will be applicable to affiliated colleges as well. According to him, affiliated colleges/constituent colleges having been established in terms of the procedures laid down by the Statutes and the Ordinances, had to be held to be established under the Act and as such, the benefit of Section 16(1)(c) would flow to the petitioner-College as well.

15. It is further submission of the learned counsel for the petitioner that once an exemption has been granted by the Central Government u/s 16(2) of the Act, it is the Central Government alone, who could withdraw the exemption on the alleged ground of non-fulfilment of any condition granting exemption and the respondent No. 1, Regional Provident Fund Commissioner could not have taken a decision in that behalf. The learned counsel for the petitioner relied upon the following two judgments in support of his contention:

(i) (2003) Law Suit (Cal) 171, Gajanand Commercial Private Ltd. Vs. Central Provident Fund Commissioner.

(ii) 1970(1) LLJ 396, Gupta (RKL) and Ram Babu Lal & Ors.

16. On the other hand, Mr. Rajesh Manchanda, learned counsel appearing for the respondent No. 1 would submit that a distinction has to be drawn between an affiliated college and the college established by the Delhi University. According to him, the affiliated colleges would be governed by the Act and the provisions of Statute 28-A would not be applicable to them. According to him, the provisions of Statute 28-A would be applicable to the regular employees of the University, but not to the employees of the affiliated colleges. The reading of the Act, Statutes and the Ordinances, would show that an "Affiliated College" is different from a College established by the Delhi University. The learned counsel for the respondent No. 1 would rely upon the judgment of Punjab and Haryana High Court reported as PLR (1996) 113 P & H 33, Managing Committee, Appejay Saraswati College for Girls Vs. State of Haryana and Ors., to contend that in case of conflict, it would be the Central Government, which would hold the field. The respondent No. 2 has also filed its submissions. The learned counsel for the Delhi University (respondent No. 2) would support the case of the petitioner. He would rely upon Section 46(2) of the DU Act and the Government's notification dated March 5, 1976, which declared the Delhi University Provident Fund as a Government Provident Fund and Statute 28 and 28-A of the University Statute to contend that they are mutatis mutandis applicable to the employees of the affiliated and constituent colleges of the University. Mr. Amitesh Kumar, learned counsel appearing for the UGC would also support the stand of the petitioner-college.

17. Before I deal with the rival submissions of the parties, a few words on the impugned order. I find that the impugned order was passed in the year 1995. It is admittedly an order u/s 7A of the Act. Even though some of the provisions of the DU Act have been noted, but, not in the manner in which, the provisions have been depicted in this judgment. The Commissioner has decided such an important issue by holding that an affiliated college coming under the administrative control of the Delhi University do not satisfy the criteria for exclusion laid down u/s 16(1)(c) of the Act. There is no reasoning given by the Commissioner as to why the exclusion would not be applicable to the petitioner-College. This Court has two recourses, one, to send back the matter to the Commissioner for fresh determination and two, determine the issue itself. I

choose the latter one.

18. Having considered the rival submissions of the counsel for the parties. The short question that arises for my consideration is whether the petitioner-College, an affiliated College under the Delhi University is entitled to the claim the benefit of exemption u/s 16(1)(c) of the Act, which stipulates that the provisions of the Act will not apply to the establishments which have been set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of Contributory Provident Fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits.

19. The DU Act was enacted with the object and purpose of establishing and incorporating a teaching and affiliating University at Delhi. Section 2(a) of the DU Act recognizes two types of colleges; an Affiliate College and a Constituent College. Further, it defines "College" as an institution maintained or admitted to its privileges by the University and includes an Affiliated College and a Constituent College. Explanation I of the aforesaid section defines an affiliated College as an institution recognised by the University in accordance with the provisions of this Act and the Statutes in which instruction is provided in accordance with the provisions of the Statutes and Ordinances up to the Bachelor's degree, but exclusive of Honours and Post-graduate degrees. Further, explanation II defines Constituent College as an institution recognised as such by the Executive Council in accordance with the provisions of the DU Act and the Statutes made thereunder. Section 2(d) defines "Principal" as the head of a College; and includes when there is no Principal, the person for the time being duly appointed to act as Principal, and in the absence of the Principal or the acting Principal, a Vice-Principal duly appointed as such. Clause (f) of the aforesaid section provides that "Statutes", "Ordinances" and "Regulations" mean, respectively, the Statutes, Ordinances and Regulations of the University made under the DU Act. According to clause (g) "Teachers" include Professors, Readers, Lecturers and other persons imparting instructions in the University or in any College or Hall. Further, clause (h) provides that "Teachers of the University means persons appointed or recognised by the University for the purpose of imparting instruction, in the University or in any College.

20. Powers of the Delhi University are dealt by Section 4 of the DU Act. It, inter alia, provides that the University shall have the power to maintain Colleges and Halls, to admit to its privileges Colleges not maintained by the University and to withdraw all or any of those privileges, and to recognise Halls, not maintained by the University and to withdraw any such recognition. It further provides that the University shall have the power to declare with the consent of the colleges concerned, in the manner specified by the Academic Council, Colleges conducting courses of study in the Faculties of Medicine, Technology, Music or Fine Arts, as autonomous Colleges. However, the extent of the autonomy which each such College may have, and matters in relation to which it may exercise such autonomy, shall be such as may be prescribed by the Statutes. Section 4(9-B)

bestows the University with the power to set up one or more College Administrative Councils for two or more Colleges with such composition, powers and functions as may be laid down in the Statutes.

21. Section 28 deals with "Statutes" and it provides that subject to the provisions of the DU Act, the Statutes may, inter alia, provide for the establishment and abolition of Faculties, Departments, Halls, Colleges and Institutions; the conditions under which Colleges and other institutions may be admitted to the privileges of the University and the withdrawal of such privileges; the extent of the autonomy which a College declared as an autonomous College under Clause 9(a) of Section 4, may have and the matters in relation to which such autonomy may be exercised; the composition, powers and functions of College Administrative Councils.

22. Section 30 lays down the realm within which the University is empowered to formulate "Ordinances" subject to the provisions of the DU Act and the "Statutes" and among various such domains, the University is empowered to formulate Ordinances with regard to the management of Colleges and other Institutions founded or maintained by the University as well as with regard to the supervision and inspection of Colleges and other Institution admitted to privileges of the University. Conditions of services of "officers" and "teachers" comes u/s 45(1) wherein it is provided that Every salaried officer and teacher of the University shall be appointed under a written contract, which shall be lodged with the University and a copy thereof furnished to the officer or teacher concerned.

23. Ordinance XVIII of the DU Act deals with colleges other than those maintained by the Government of India. Clause 1-B of the aforesaid Ordinance lays down the criteria under which permanent affiliation may be granted by the Executive Council to any institution. Further, the said Ordinance also lays down that in order to enjoy affiliation with the University, it is mandatory for an institution to fulfil all the conditions of affiliation and attain the academic and administrative standards prescribed by the University from time to time. It further provides for the Governing Body will meet at least once in a term, and, shall have general supervision and control of the affairs of the College and maintain its own records of its proceedings which shall be open to inspection by the inspection authority. It also provides for the constitution of a "Staff Council" of which the Principal shall be ex-officio Chairman. Such a "Staff Council" is vested with the power to take decisions in matters relating to preparation of College time-table; allocation of extra-curricular work of teachers not involving, payment of remuneration; Organising extra-curricular activities, including cultural activities of students, sports, games, National Service Scheme and other social services schemes and academic societies; laying down guide-lines for purchase of library books and laboratory equipment in consultation with the appropriate departments and organising admission of students. Further, the "Staff Council" is clothed with the power to make recommendation with regard to

Formulation of recommendations on introduction of new teaching posts in the departments and expansion of the existing departments; formulation of admission policy within the framework of the policy laid down by the University; formulation of guidelines regarding arrangements for the residence and welfare of students in consultation with appropriate students organizations and formulation of guide-lines regarding discipline of the students; formulation of policies for recommending names of teachers for participation in seminars and conferences and financial assistance to teachers.

24. Ordinance XVIII further stipulates the mode and manner in which the Staff Council shall execute its functions, appointment of the Principal and other members of teaching staff and the service conditions of Principals and teachers.

25. A close scrutiny of the aforesaid provisions of the DU Act indicate that the Delhi University, which is an institution created under a Central Statute, wields deep control over the management and superintendence of the "Colleges".

26. Further relevant provision in the DU Act dealing with pension and provident fund is section 46, which lays down that the University shall constitute, for the benefit of its officers, teachers, clerical staff and servants, in such manner and subject to such conditions as may be prescribed by the Statutes, such pension, insurance and provident funds as it may deem fit. Section 46(2) further lays down that where any such pension, insurance or provident fund has been so constituted or where any such pension, insurance or provident fund has been constituted by a College under rules which have been approved by the Central Government, the Central Government may declare that the provisions of the Provident Funds Act, 1925, shall apply to such fund as if it were a Government Provident Fund.

27. Furthermore, section 28(d) of the DU Act provides that the Statutes may provide for the constitution of a pension or Provident Fund and the establishment of an Insurance Scheme for the benefit of the officers, teachers and other employees of the University. In order to accord such a benefit, Statute 28-A provides for a General Provident Fund-cum-Gratuity Scheme under which provisions are made for General Provident fund, Gratuity, Family Pension, Extra-Ordinary Pension and Gratuity. Further, the various Schedules to Statute 28-A provides for scale of pension, gratuity and family gratuity and pension. Moreover, Appendix "B" to Statute 28-A provides for Contributory Provident Fund-cum-Gratuity Scheme, Provident Fund, Deposit-linked Insurance Scheme, Gratuity, etc. In pursuance to General Provident fund-cum-Pension-cum-Gratuity Scheme contained in Appendix "A" and the Contributory Provident Fund-cum-Gratuity Scheme in Appendix "B" of Statute 28-A the Delhi University has formulated the Rules of 1970 and such rules are applicable to all the Colleges and maintained institutions of the University of Delhi in receipt of Maintenance Grant from the University Grants Commission.

28. A reading of Section 46, section 28(d), Statute 28-A and Ordinance XVIII 1-

B(iii) of the DU Act along with the scope and application of Rules of 1970, it is imperative for an educational institution to maintain various funds for the purpose of pension, provident fund, gratuity, etc for its employees in accordance with the Rules of 1970 and such funds are deemed to be Government Funds and thus, falling within the purview of the Provident Fund Act, 1925. Thus, it is beyond doubt that the petitioner, which is an affiliate college of the Delhi University receiving Maintenance Grant from the University Grants Commission, is an establishment whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with the aforesaid rules framed by the Central Government governing such benefits. Therefore, the Act is not applicable to the petitioner, in terms of Section 16(1) (c) of the Act.

29. Further, I find that the employees of the affiliated colleges are being governed by the Rules since very long. The retirement benefits were/are being given to the employees retiring from these colleges under the provisions of the Rules. No employee at any point of time protested the non-applicability of the Act. It is too late in the day to contend that insofar as the petitioner-College is concerned, the same would be governed by the Act. It appears that this is the consistent position with regard to all affiliated colleges under the University.

30. Insofar as the judgments relied upon by the learned counsel for the parties are concerned, first, I deal with the judgment as cited by the respondent No. 1. Insofar as the case of Managing Committee, Appejay Saraswati College for Girls (supra) is concerned, the same would not be applicable in the facts of this case inasmuch as the Punjab & Haryana High Court was dealing with the EPF Act on the one hand and the State Act called as Haryana Affiliated Colleges (Security of Service) Act, 1979. The Punjab & Haryana High Court held that in the absence of any sanction of the President for enactment of the Act of 1979, it is the EPF Act, which would hold the field. Such is not the position in the present case as the Acts with which this Court is concerned, are both Central Acts and Section 16(1) (c), would be applicable as determined above in this judgment.

31. Insofar as the judgment relied upon by the learned counsel for the petitioner, I am of the view that both the judgments i.e. Gajanand Commercial Pvt. Ltd.'s case (supra) and the Gupta (RKL) case's (supra) would not be applicable in the facts of this case inasmuch as the Courts in those judgments were concerned with Section 17 of the Act. In any case, since I have taken a view about the applicability of Section 16(1)(c), I say no further.

32. In view of my above discussion, the writ petition is allowed. The order of Regional Provident Fund Commissioner u/s 7A as communicated to the petitioner vide letter dated May 27, 1995 is set aside. No order as to costs.